Supreme Court, U.S.
FILED
09-437 SEP 23 2009
OFFICE OF THE CLERK

No. 09-

IN THE

Supreme Court of the United States

JAY S. SPECHLER,

Petitioner,

v.

VICTOR TOBIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

This dispute involves the available remedies and appropriate standards of review when an elected Florida State Court Judge is maliciously stripped of his judicial office, staff and portfolio, by a newly installed Chief Judge, who then proceeds to publicize the matter, including improperly publicizing a confidential Florida Judicial Qualifications Commission ("JQC") complaint filed by the Chief Judge against the aggrieved Judge. Chief Judge Victor Tobin's actions were retaliatory, and promptly followed a judicial meeting wherein Judge Jay Spechler questioned the propriety of Chief Judge Tobin's proposed handling of a public funding matter. These actions included barring Judge Spechler from the Broward County Courthouse at a time when Judge Spechler had personal real estate litigation matters which he needed to attend to, in addition to violating Judge Spechler's rights of speech, assembly, and due process, including meeting with his judicial colleagues in the Courthouse. In response to these coordinated attacks, Judge Spechler resigned and brought this action, including claims under 42 U.S.C. § 1983, which was dismissed, with prejudice, prior to any discovery and without allowing leave to further amend.

The jurisprudence of Florida pertaining to unconstitutional acts of a Chief Judge when administering subordinate judges is non-existent and Petitioner, after suffering an act of retaliation by the Chief Judge, had no administrative remedy and therefore could only obtain relief in the courts. In dismissing this action, with prejudice, the United States District Court in and for the Southern District

of Florida failed to view the facts in a light most favorable to the Plaintiff, failed to allow amendment to meet the allegations and failed to allow discovery to prove malice, or, alternatively, failed to presume malice for purposes of ruling on the Motion to Dismiss. On appeal to the United States Court of Appeals for the Eleventh Circuit, the court failed to follow the law of this Court and incorrectly determined that the district court's findings were correct.

Three questions are presented:

1. Whether a State Court Judge, exercising his authority as Chief Judge maliciously and for retaliation, is immune from liability to a fellow judge who suffers damage as a result of the Chief Judge's actions.

2. Whether the district court improperly applied the tests and case law applicable to dismissal of a 1983 action regarding immunity, and whether the issue of malice must be presumed when Defendant files a Motion to Dismiss, asserts immunity and prevents discovery.

3. Whether the district court must allow opportunity to further amend before dismissing a 1983 action, with prejudice, based upon immunity, or remand the state law causes of action.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW ...	i
TABLE OF CONTENTS	iii
TABLE OF APPENDICES	v
TABLE OF CITED AUTHORITIES	vi
CITATIONS OF THE OPINIONS AND ORDERS BELOW	1
STATEMENT OF BASIS FOR JURISDICTION	1
CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED IN THE CASE	2
STATEMENT OF THE CASE AND FACTS ..	5
A. Statement of the Case	5
B. Statement of Facts	6
SUMMARY OF ARGUMENT	12
REASONS FOR GRANTING THE PETITION ..	14
I. The Findings of Qualified Immunity and Sovereign Immunity Were Erroneous ...	14

Contents

	Page
A. Standard of Review	14
B. The District Court's Findings, of Qualified Immunity and Sovereign Immunity, Conflict with Decisions in Other Circuits and with Decisions of this Court.	15
(1) Qualified Immunity	15
(2) Sovereign Immunity	19
II. Plaintiff Properly Pled Denial of Procedural Due Process and Further Sought Leave To Make Additional Allegations of Same Which The Court Improperly Denied	21
III. The District Court and the Court of Appeals Both Failed to View the Pled Facts In A Light Most Favorable To Petitioner Upon Dismissal of the Amended Complaint With Prejudice	27
IV. Any Insufficiencies Can Be Remedied By Amendment, or in the Alternative, the Pled Facts Established State Court Causes of Action Which Should Be Remanded	33
CONCLUSION	36

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Eleventh Circuit Filed June 25, 2009 ..... 1a

Appendix B — Order Granting Motion To Dismiss In The United States District Court For The Southern District Of Florida, Miami Division Entered December 10, 2008 ..... 3a

TABLE OF CITED AUTHORITIES

Page

Cases

Antoine v. Byers and Anderson,
508 U.S. 429 (1993) 19

Avellino v. Herron,
991 F. Supp. 722 (E.D. PA. 1997) 15, 16, 22

Behrens v. Pelletus,
576 U.S. 299 (1996) 17

Belk v. City of Eldon,
228 F.3d 872 (8th Cir. 2000) 17, 18

Cameron v. Seitz,
38 F.3d 264 (6th Cir. 1994) 14, 33, 35

Connick v. Meyers,
461 U.S. 138 (1983) 17

Crawford v. Carroll,
529 F.3d 961 (11th Cir. 2008) 23

Doe v. DeKalb County Sch. Dist.,
145 F.3d 1441 (11th Cir. 1998) 32

Fernander v. Bonis,
947 So.2d 584 (Fla. 4th DCA 2007) 35

Forrester v. White,
484 U.S. 219 (1987) 19

Cited Authorities

Page

Gallogly v. Rodriguez,
970 So.2d 470 (Fla. 2d DCA 2007) 33

GJR Investments, Inc. v. County of Escambia, Florida,
132 F.3d 1359 (11th Cir. 1998) 14

Glover v. Ligett Group, Inc.,
459 F.3d 1304 (11th Cir. 2006) 32

Goss v. Lopez,
419 U.S. 565 (1975) 23

Graning v. Sherburne County,
172 F.3d 611 (8th Cir. 1999) 18

Hafer v. Melo,
502 U.S. 21 (1991) 19

Harper v. Thomas,
988 F.2d 101 (11th Cir. 1993) 14

Hudson v. Palmer,
468 U.S. 517 (1984) 22, 23

Jews for Jesus, Inc. v. Rapp,
997 So.2d 1098 (Fla. 2008) 35

Kaline v. Fletcher,
522 U.S. 118 (1997) 19

Cited Authorities

Page

Kincaide v. City of Blue Springs,
64 F.3d 389 (8th Cir. 1995) 18

Leclerc v. Webb,
270 F. Supp. 2d 779 (E.D. LA. 2003) 19

McKinney v. Pate,
20 F.3d 1550 (11th Cir. 1994) 29

Mihos v. Swift,
358 F.3d 91 (1st Cir. 2004) 17, 19, 28, 29

Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,
429 U.S. 274 (1977) 15, 17

Mullin v. Town of Fairhaven,
284 F.3d 31 (1st Cir. 2002) 17

People ex rel. the Ill. Judicial Inquiry Bd. v. Hartel,
380 N.E. 2d 801 (1978) 26

Pickering v. Bd. of Educ.,
391 U.S. 563 (1968) 17

Poe v. Hayden,
853 F.2d 418 (6th Cir. 1988) 15, 35

Saucier v. Katz,
533 U.S. 194 (2001) 18

Page

Smith v. Siegelman,
322 F.3d 1290 (11th Cir. 2003) 18

Stephens v. Dept of Health & Human Servs.,
901 F.2d 1571 (11th Cir. 1990) 14

Strassburger v. Bd. of Educ.,
143 F.3d 351 (7th Cir. 1998) 21

Tookes v. City of Riviera Beach,
633 So.2d 566 (Fla. 4th DCA 1994) 22, 29

Wild v. Dozier,
672 So.2d 16 (Fla. 1996) 21, 22

Vukelic v. Bartz,
245 F. Supp. 2d 1068 (2003) 21

Statutes

28 U.S.C. § 1254 1

28 U.S.C. § 1291 1

42 U.S.C. § 1983 ..... *passim*

United States Constitution

U.S. Const. Amend. I ..... *passim*

U.S. Const. Amend. XIV, § 1 3

Page

Rules

Fla. Jud. Qual. Comm.
Rule 23 4
Rule 26 4

Fla. R. Jud. Adm.
Rule 2.215(b) 9
Rule 2.215(h) 34

Other

Fla. Const.
Art. I, §§ 2 and 9 ..... 3, 5
Art. V, § 12(a) 5
Art. V, § 12(a)(1) 25

CITATIONS OF THE OPINIONS AND ORDERS BELOW

The case below was dismissed with prejudice by the United States District Court in and for the Southern District of Florida on December 10, 2008; *Spechler v. Tobin*, 591 F. Supp. 2d 1350 (S.D. Fla. 2008). (App-B). Petitioner's Motion for Rehearing was denied by Order dated December 23, 2008. The cause was appealed to the Court of Appeals for the Eleventh Circuit and was affirmed by Order dated June 25, 2009; *Spechler v. Tobin*, Case No. 09-10246, 2009 U.S. App. LEXIS 13841(11th Cir. Fla. June 25, 2009). (App-A).

Documents contained in the record below are cited by docket entry number in Case No. 08-61130-CIV-MORENO "[DE-__]".

STATEMENT OF BASIS FOR JURISDICTION

This case, which includes claims under 42 U.S.C. § 1983, was originally filed in the Circuit Court in and for Broward County, Florida and was removed, by Respondent, to the United States District Court based upon concurrent jurisdiction. The district court issued its Order Granting Motion to Dismiss ("Order") on December 10, 2008 (App-B). The district court did not provide leave to amend and summarily closed the case; *see* Motion for Reconsideration and to File Second Amended Complaint [DE-32] and Order Denying Motion for Rehearing [DE-36]. Because the Orders were final in nature, the court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291. On June 25, 2009, the court of appeals issued its per curiam opinion affirming the

district court's Order. (App-A). This Court may exercise certiorari jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED IN THE CASE

This action is brought under 42 U.S.C. § 1983, which provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Petitioner alleges violations of his constitutional rights pursuant to the United States Constitution Amendments I and XIV § 1, which provide as follows:

> **AMENDMENT I**—Congress shall make no law . . . prohibiting the free exercise thereof, or abridging the freedom of speech . . . and to petition the Government for a redress of grievances."

> **AMENDMENT XIV. Section 1**— . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Petitioner alleges violations of his constitutional rights pursuant to the Florida Constitution Article I §§ 2 and 9, which provide as follows:

> **SECTION 2. Basic rights.**—All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited

by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

SECTION 9. Due process.—No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

Petitioner alleges that Respondent violated Rules 23 and 26 of the Florida Judicial Qualifications Committee which provide as follows:

Rule 23 of the JQC provides:

Confidentiality of Proceedings

a) Until formal charges against a judge are filed by the Investigative Panel of the Commission with the Clerk of the Supreme Court, all proceedings by or before the Commission shall be confidential;

b) Omitted; and,

c) Every witness in every proceeding under these Rules shall be sworn to tell the truth and not to disclose the existence of the proceeding, the subject matter thereof, or the identity of the judge until the proceeding is no longer confidential under these Rules. Violation of this oath shall be an act of contempt of the Commission.

STATEMENT OF THE CASE AND FACTS

A. Statement of the Case

This appeal was precipitated by the district court's Order which dismissed, with prejudice, Judge Jay Spechler's Amended Verified Complaint ("Amended Complaint") against Judge Victor Tobin, Chief Judge of the State of Florida's Seventeenth Circuit. [DE-18]. The lawsuit, in its amended state, brought Count I, Violation of 42 U.S.C. § 1983 ("1983 Action"); Count II, Violation of Article I, Sections 2 and 9, and Article V, Section 12(a) of the Florida Constitution; Count III, Constructive Discharge; Count IV, Intentional Infliction of Emotional Distress; and Count V, False Light Invasion of Privacy. The basis for federal jurisdiction in the district court were Petitioner's 1983 claims.

The Amended Complaint alleged that newly installed Chief Judge Tobin, maliciously retaliated against Judge Spechler for his statements made during a meeting of judges questioning the propriety of the Chief Judge's proposed approach to a funding issue, and for Judge Spechler's prior support of his friend and colleague for the position of Chief Judge. Chief Judge Tobin maliciously banished and barred Judge Spechler from the "Central Courthouse", stripped him of his office, staff and portfolio of cases, transferred him to a non-existent traffic division docket at satellite courthouses, and publicized the matter in the local press. A Verified Complaint was initially filed in state court, but Respondent removed the action to federal court in accordance with 42 U.S.C. §1983. [DE-1]. After a hearing on the first motion to dismiss and prior to any order on

that motion, Judge Spechler filed supplemental authority, and then the Amended Complaint as a matter of right. [DE-18]. By Order dated December 10, 2008, the district court dismissed the action, with prejudice.

The Order concluded, *inter alia*, that the acts complained of were protected by both qualified and sovereign immunity and that Judge Spechler failed to pursue administrative remedies. (App-B at 1, 2). Petitioner sought rehearing and requested leave to further amend on December 18, 2008, [DE 32], but that Motion was denied by Order dated December 23, 2008.

B. Statement of Facts

The Amended Complaint described how the relationship between Judge Spechler and Judge Tobin eroded over time. [DE-18]. Prior to filing the lawsuit, Judge Spechler had served for the preceding twenty years with an unblemished record as a county court judge in Broward County, Florida. In Florida, county and circuit judges are elected by the general populous, and must stand for reelection at the conclusion of each six year term. Judge Spechler served as chairperson to the County Court Civil Division from 1991 to 1995, and as Administrative Judge of the County Court from 1995 through 2007. In that latter position, he supervised 32 county court judges and over 20 traffic hearing officers. When Judge Spechler's former law partner, best friend and judicial colleague of twenty years, Circuit Judge Tom Lynch, announced that he intended to run for the open position of chief judge, Judge Spechler resigned his position as an administrative judge and actively supported Judge Lynch's candidacy. During the

campaign Judge Spechler learned that Judge Tobin, who was also running for the position of chief judge, was repeatedly speaking ill of Judge Spechler. Judge Tobin described Judge Spechler as a "bully" who intimidated other judges. [DE-18; para. 18]. On or about July 17, 2007, Judge Tobin won the runoff election against Judge Lynch. After the election, Judge Spechler met with Judge Tobin in an attempt to address the negative statements Judge Tobin had been making about Judge Spechler during the campaign. However, Judge Tobin refused to discuss the matter. [DE- 18, para. 22].

Thereafter, Judge Spechler was informed that Judge Tobin had accused him of making derogatory statements about Judge Tobin. These allegations were also false and refuted by the witnesses to the incident. Nonetheless, Judge Tobin repeated these false allegations. [DE- 18; para. 23-28].

On or about January 18, 2008, Judge Spechler again attempted to "clear the air" and initiated a conversation with Judge Tobin by stating that he had never made the purported disparaging remarks about Judge Tobin which Judge Tobin had attributed to him. However, that attempt at exoneration was met with Judge Tobin's abrupt statement, "I am done with you." [DE- 18, para. 31].

On or about March 8, 2008, Judge Tobin disseminated an e-mail to all judges and judicial assistants including a statement he was not going to disclose to the Legislature of the State of Florida that there was a possibility of obtaining funding for the "traffic hearing officers program" from Broward County.

[DE-18; para. 32, Exh.1]. Judge Tobin requested the contents of that e-mail be kept confidential since, as he stated, "If the County indicates they will pick up the funding why would the State fund the program?" Thereafter, Judge Spechler, Judge Tobin, and others attended a meeting concerning the traffic hearing officers program on March 19, 2008. On that occasion, Judge Spechler publicly indicated that he was troubled by the fact that Judge Tobin was concealing from the state the other potential funding source and, at the same time, inflating the request for funds from the Broward County Commission. Judge Spechler expressed to Judge Tobin and to all at the meeting that the court's credibility would be compromised if Judge Tobin continued such strategy. Judge Spechler also voiced his opinion that the program could be continued efficiently with less money than the amount projected by Judge Tobin. [DE-18, para. 33-36].

In retaliation for Judge Spechler's exercise of his First Amendment rights, nine days later, on or about March 28, 2008, a Friday afternoon, Judge Spechler received an envelope marked "Confidential" containing a letter from Judge Tobin. The delivery of this envelope interrupted an ongoing hearing which was being conducted by Judge Spechler in chambers. Inside the envelope was a letter dated March 27, 2008 ("the Letter") from Judge Tobin which stated that Judge Spechler was reassigned effective that very day, March 28, 2008 to "civil traffic and parking ticket dockets at the satellite courthouses." Petitioner was instructed "you are not to return to the Central Courthouse except at my direction." [DE-18, para. 37-38; Exh. 2].

The Letter indicated that Judge Spechler should consult with Judge Zeller regarding his assignment to purported civil traffic and parking ticket cases at the satellite courthouses in Broward County, Florida, effective March 28, 2008. [DE-18, p. 44, Exh.2]. On Friday evening, March 28, 2008, Judge Spechler called Judge Zeller and asked permission to enter the Central Courthouse in order to relocate his personal effects. Judge Spechler inquired as to where he was expected to move his effects and report for work on Monday morning. After conferring with Judge Tobin, Judge Zeller telefaxed Judge Spechler giving him permission to enter the Central Courthouse only over that weekend, and only to empty his office. [DE-18, Exh. 3]. Judge Zeller either refused or was unable to advise Judge Spechler where he was to report for work the following Monday morning. [DE-18; para. 49-50]. Judge Spechler further alleged that the assignment was a sham since there were no such dockets or divisions assigned to Judge Spechler in any satellite courthouse at the time of transfer. [DE-18; para. 45].

When Judge Spechler received the Letter, he believed that if he appeared at the Central Courthouse for any purpose, Judge Tobin would hold him in contempt for violation of Rule 2.215(b) of the Florida Rules of Judicial Administration. [DE-18; para. 78-79]. Yet Judge Spechler at that time, on cases he had filed, personally, relating to real estate, had a pending summary final judgment foreclosure hearing and an evidentiary eviction proceeding scheduled for the following week. By Judge Tobin's acts, Judge Spechler was banished and barred from the Central Courthouse and relegated to sit at home with no judicial function to

perform. Judge Spechler was not only stripped of his portfolio and the attendant services and functions he was elected and assigned to perform, he was also deprived of a work place since there was no docket or courthouse to report to. [DE-18; para. 67-73].

At the same time or immediately after preparing and sending the Letter, upon information and belief, Judge Tobin revealed the contents of the confidential Letter to the *Sun Sentinel*, *Miami Herald*, *Daily Business Review*, WPLG Channel 10, and others. [DE-18; para. 46]. Approximately two hours after receipt of the Letter, the *Sun Sentinel* began making inquiries as to the details surrounding the Letter. Judge Spechler received telephone calls from reporters from the *Daily Business Review* and the *Miami Herald*. WPLG Channel 10 sent a reporter and cameraman to Judge Spechler's home. Ensuing headlines, newspaper articles, and television coverage described Judge Spechler as having been "demoted", "barred", "ordered to stay away" and "told not to return" to the Central Courthouse. When called upon by the press to explain the reason for the banishment, Judge Tobin stated "the letter spoke for itself". [DE-18; para. 57-61].

The Amended Complaint also alleged that at this same time, Judge Tobin had filed a confidential complaint with the Florida Judicial Qualifications Commission ("JQC"). This information was leaked to the media. [DE-18; 20, 21] Judge Spechler further asserted that, as a matter of Florida law, Judge Tobin had no authority to discipline, reprimand or suspend Judge Spechler, because that authority was vested in the Florida Supreme Court after receiving a

recommendation from the JQC. Rather than await the outcome of an investigatory proceeding by the JQC, (ultimately the JQC determined that there was no cause to proceed against Petitioner), Judge Tobin took it upon himself to retaliate against Judge Spechler in contravention of Canon 3D(1) of the Florida Judicial Code of Conduct, as it pertains to the function of the JQC and Judge Spechler's constitutional rights. [DE-18; para. 29, 39-43]. Judge Spechler also alleged that Judge Tobin engaged in a campaign to smear Judge Spechler, by revealing a confidential complaint filed against Judge Spechler with the JQC. [DE- 18, para. 19-21].

Lacking any administrative remedy provided by Florida law to address his banishment, Judge Spechler was obligated by the Florida Rules of Judicial Administration to follow the Order. Because Judge Spechler was denied the ability (a) to exercise his rights as a litigant at the Central Courthouse; (b) to meet other judges at the Central Courthouse; and (c) to speak freely concerning the unconscionable actions of Judge Tobin. Because he was being attacked in his job, before the JQC and in the press, Judge Spechler resigned his position at 5:00 p.m., Monday, March 31, 2008. [DE-18; para. 78-83; Exh. 4].

The resignation was justified for several reasons. First, Judge Spechler could then exercise his constitutional right to attend to his personal litigation without fear of contempt; second, he could end the personal attacks and mitigate the damage to his reputation that was being caused by the onslaught of headlines and television publicity branding Judge Spechler as the banished, demoted and barred judge;

and third, he recognized that he had no administrative remedy to address his banishment and therefore had no recourse.

SUMMARY OF ARGUMENT

This case is truly unique in that it involves a chief judge of a state court who exceeded his discretionary authority, ignored established procedures for the adjudication of another judge's conduct, and usurped the authority of the Florida Supreme Court by disciplining a judge. As Florida does not provide an administrative remedy to a judge whose constitutional rights have been violated by a chief judge, a remedy under 42 U.S.C. § 1983 is appropriate. This 1983 action raises several issues which are deserving of this Court's attention.

The district court erred in the following ways:

(a) Petitioner alleged violations of clearly established constitutional rights, yet the district court did not accept the facts as alleged, with particular reference to the fact that the dockets to which Judge Spechler was transferred were neither existing nor contemplated, and that Judge Spechler was banished from the Central Courthouse; the district court improperly adopted the facts contained in Judge Tobin's Motion to Dismiss in justifying its ruling; and the district court relied on an administrative order which on its face does not provide evidence of existing dockets.

(b) The district court misapplied Petitioner's allegations of malice. The existence of malice both

negates the invocation of qualified immunity, and negates the invocation of sovereign immunity. Also, the district court failed to apply a subjective test to the determination of malice. Therefore, at this stage of the litigation, the allegation of malice should have been sufficient, as discovery is necessary to determine the mind-set of Judge Tobin, and the district court should have allowed Judge Spechler to proceed with the Amended Complaint in order to prove the existence of malice. On this point, the district court mistakenly concluded that the issuance of the Letter was within Judge Tobin's area of authority when the Letter, in effect, suspended the function of Judge Spechler, and that act usurped the authority of the Florida Supreme Court. The district court failed to recognize that a reprimand or suspension can be constructive in nature, and wrongly relied on its own reading of the Letter, as opposed to what effect the Letter had on the career of Judge Spechler. It was just not what the Letter said, but what the Letter accomplished.

(c) The district court failed to recognize that a constitutional violation ripens when it occurs, and that Judge Spechler was not required to further approach Judge Tobin or to petition the Florida Supreme Court before resigning. The district court wrongly concluded that Judge Spechler either lacked standing to bring his claim or waived his claim since he did not seek an administrative remedy. Judge Spechler argues that no stated administrative remedy exists and the Florida Supreme Court cannot fairly judge the acts of its own agent. The absence of any remedy further justified Judge Spechler's subsequent resignation and filing of the 1983 action.

REASONS FOR GRANTING THE PETITION

I. The Findings of Qualified Immunity and Sovereign Immunity Were Erroneous

The court of appeals' opinion fails to follow proper standards of review, fails to follow applicable law and thereby sanctions and affirms the district court's opinion which conflicts with applicable law of this court and other circuits.

A. Standard of Review

In *GJR Investments, Inc. v. County of Escambia, Florida*, 132 F.3d 1359, 1366 (11th Cir. 1998), the Eleventh Circuit expressed the standard of review applicable to a motion to dismiss which invokes qualified immunity in a 1983 action:

> whether a complaint sufficiently states a claim is a matter of law that we review *de novo*. *See Harper v. Thomas*, 988 F.2d 101, 103 (11th Cir. 1993). In so doing, we use the same standard as the district court, accepting all allegations as true and construing facts in a light most favorable to the plaintiff. *See, e.g., Stephens v. Dept of Health & Human Servs.*, 901 F.2d 1571, 1573 (11th Cir. 1990).[1]

Id. at 1366.

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1. Petitioner sought leave to file a Second Amended Complaint. [DE-32]. In *Cameron v. Seitz*, 38 F.3d 264, 273 (6th Cir. 1994), the court stated in Footnote 2 that in the event a civil

(Cont'd)

B. The District Court's Findings, of Qualified Immunity and Sovereign Immunity, Conflict with Decisions in Other Circuits and with Decisions of this Court.

(1) *Qualified Immunity*

The district court departed from controlling case law on the subject of qualified immunity. In *Avellino v. Herron*, 991 F. Supp. 722 (E.D. Pa. 1997), a state trial judge brought a civil rights action against a state administrative judge and his court's presiding judge, alleging that he had been wrongfully "demoted" for exercising his First Amendment free speech right when he complained of his assignment to preside over felony waiver cases. The court in *Avellino* held that the defendants were not entitled to qualified immunity and the allegations were sufficient to state a claim against the administrative judge. *Id.* at 729-730. The court followed *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977), and stated that:

> An otherwise legitimate and constitutional government act can become unconstitutional

(Cont'd)
rights plaintiff does not include in the original complaint all factual allegations necessary to sustain a conclusion that the defendant violated a clearly established law, the plaintiff should be allowed to come forward with additional facts or allegations showing that rights were violated or that those rights were clearly established. Especially in light of the JQC proscriptions, and the fact that the matter is now concluded, Petitioner should be given leave to further amend in the event the Amended Complaint is insufficient as a matter of law. *See also Poe v. Hayden*, 853 F.2d 418, 425 (6th Cir. 1988).

> when an individual demonstrates that it was undertaken in retaliation for his exercise of First Amendment speech. This doctrine demonstrates that, at least where the First Amendment is concerned, the motives of government officials are indeed relevant, if not dispositive, when an individual's exercise of speech preceded government action affecting that individual.
>
> Because Judge Avellino has alleged that the actions of the defendants were undertaken in retaliation for his exercise of First Amendment speech putting at issue the motive of the decision maker, the court cannot conclude that this case should be dismissed under the qualified immunity doctrine at this stage of the proceeding.

Avellino, 991 F. Supp. at 729.

Judge Spechler pled violation of his First Amendment free speech right. Specifically, that Judge Tobin knew, as a trained lawyer and judge for twelve years, that Judge Spechler had the right of free speech, access to the Central Courthouse, interest in his employment and interest in his reputation. Judge Spechler further pled that Judge Tobin maliciously or recklessly ignored and violated Judge Spechler's Constitutional rights. [DE-18; para. 86-88]. The Amended Complaint is replete with factual allegations that involved the intentional and reckless conduct of Judge Tobin in furthering his scheme of retaliation. [DE-18, para. 17-38, 41-43, 52-54, 60-65, 75-77, 87].

In order to adjudge whether Judge Spechler alleged a *prima facie* claim of unlawful retaliation for the exercise of his right of free speech when measured in the context of qualified immunity, the Court must determine: (1) whether the statements of Judge Spechler involved a matter of public concern; (2) whether when balanced against each other, the First Amendment interests of Judge Spechler and the public outweigh the government's interest to function efficiently; and (3) whether the protected speech was a substantial and motivating factor in the adverse action suffered by Judge Spechler in his employment. *Mihos v. Swift*, 358 F.3d 91, 102 (1st Cir. 2004) (citing *Connick v. Meyers*, 461 U.S. 138, 147-48 (1983)).[2] The facts in the Amended Complaint are deemed true. *See Mihos*, 358 F.3d at 99 (citing *Behrens v. Pelletus*, 576 U.S. 299, 301 (1996)). In addition, the motivation for the transfer of Judge Spechler must be examined closely by the Court because the nature of the motivation may prevent the invocation of qualified immunity in the initial stage of the litigation. *Mihos*, 358 F.3d at 99.

While not all speech is protected, it "is generally accepted that speech regarding the use of public funds touches on a matter of public concern." *Belk v. City of Eldon*, 228 F.3d 872, 878 (8th Cir. 2000) (quoting

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2. The court in *Mihos* cited *Mullin v. Town of Fairhaven*, 284 F.3d 31, 37-38 (1st Cir. 2002) (discussing the Supreme Court precedents that require each of these three elements: *Connick v. Myers*, 461 U.S. 138, 147-48 (1983) (matter of public concern requirement); *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968) (balancing requirement); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287(1977)(substantial factor requirement). Each of these will be addressed in sequence.

Kincaide v. City of Blue Springs, 64 F.3d 389, 396 (8th Cir. 1995). It is also settled law that criticism of a public employer in his or her capacity as a public official touches on matters of public concern. *Belk*, 228 F.3d at 578. Thus, there can be no debate that the statements made by Judge Spechler were clearly established as protected by the First Amendment.

Once a prima facie case has been alleged, the burden shifts to the employer to answer and articulate a non-discriminatory reason for the adverse employment action. *Smith v. Siegelman*, 322 F.3d 1290, 1291-95 (11th Cir. 2003). Therefore, Judge Tobin must explain why he effected the transfer and banishment of Judge Spechler in the manner he did. It was incumbent upon Judge Tobin to provide a rationale in light of the absence of dockets and chambers necessary for Judge Spechler to perform his duties and the unauthorized and unprecedented banishment of Judge Spechler from the Central Courthouse where he had served for the past twenty years. Judge Spechler would then have an opportunity to reply and prove that the reasons given are pretextual. *Graning v. Sherburne County*, 172 F.3d 611, 615 (8th Cir. 1999). The allegations of Judge Spechler create a causal connection and these allegations must be accepted as true at this stage of the litigation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

Rather than answer the Amended Complaint and raise disputed issues of fact, Judge Tobin moved to dismiss, and therefore had to admit the allegations and justify his conduct within the context of those allegations. *Smith*, 322 F.3d at 1295. As indicated above,

it is appropriate in the first step of qualified immunity analysis for the Court to inquire into Judge Tobin's subjective motivation. *Mihos,* 358 F.3d at 103.

(2) *Sovereign Immunity*

The allegations of the Amended Complaint demonstrate on their face that the doctrine of sovereign immunity does not apply. *See Forrester v. White*, 484 U.S. 219 (1987) (holding that a judge's administrative decisions were not judicial acts for which he should be held absolutely immune). This Court's jurisprudence has long held that not every act by a judicial officer is a "judicial act" subject to judicial immunity. *Leclerc v. Webb*, 270 F. Supp. 2d 779, 793 (E.D. La. 2003), *aff'd per curium*, 419 F. 3d 405 (5th Cir. 2005). As in *Forrester*, a judge's absolute immunity does not extend to actions performed in a purely administrative capacity, even if essential to the operation of the court. *Forrester*, 484 U.S. at 229-30; *see Antoine v. Byers & Anderson*, 508 U.S. 429 (1993).

In determining immunity, it is the "nature of the function performed, not the identity of the actor who performed it." *Kaline v. Fletcher*, 522 U.S. 118 (1997); *see Forrester*, 484 U.S. at 229. This Court has stated that state officers are not absolutely immune from personal liability by virtue of the "official" nature of their acts. *Hafer v. Melo*, 502 U.S. 21, 29 (1991). Despite the fact that the trial court concluded that Judge Tobin was acting within the scope of his authority, the district court ignored the inapplicability of sovereign immunity when a public officer acts maliciously.

While quoting Fla. Stat. § 768.28(9)(a) (2007) in the Order, the district court ignored the phrase, "unless such officer, employer or agent acted in bad faith." The district court failed to give the proper weight to Judge Spechler's allegations of Judge Tobin's malicious or retaliatory acts which were obviously perpetrated in bad faith. [DE-30; p. 16]. These allegations are set forth in detail in the Amended Complaint and therefore the invocation of sovereign immunity was improper.

The decision of the Eleventh Circuit Court of Appeals, below, lacks any citation of authority, misapplies the applicable law by accepting factual assertions of the Defendant on Motion to Dismiss while ignoring the Plaintiff's assertions and fails to make any analysis of the important issues which were placed before the court. This decision is a departure from the accepted and usual course of judicial proceedings and effectively sanctions and affirms the district court's opinion. The analysis was specific and detailed in its reasoning, but departed from established law of this Court and other circuits. As discussed herein, the district court's opinion is worthy of review by this Court and Petitioner asserts that district court's decision is properly reversed with specific directions to clarify and restate applicable areas of the law. The opinion of the court of appeals fails to advance this process and is properly reversed.

Specifically, the court of appeals misapprehends the applicable facts by describing the basis for Judge Spechler's claim as his "reassignment by the Chief Judge to a different judicial post." The opinion overlooks the fact that Judge Spechler was forbidden from entering the Central Courthouse for purposes of

pursuing his own litigation, communicating with other Judges or any other purpose, overlooks the malicious nature of Judge Tobin's conduct as alleged in the Complaint and ignores the allegations that the banishment, as well as a judicial qualifications proceeding, were publicized in the press by Judge Tobin

II. Plaintiff Properly Pled Denial of Procedural Due Process and Further Sought Leave To Make Additional Allegations of Same Which The Court Improperly Denied

The issue of whether a resignation is voluntary or involuntary revolves around an analysis of procedural due process. Judge Spechler alleged in his Amended Complaint that "without effective legal recourse to address the exigencies of his personal litigation, Plaintiff was compelled to resign his position as judge in order to extricate himself from Defendant's illegal directive." [DE-18, para. 81]. "In a procedural due process claim, the focus is not on whether the individual has been denied a constitutionally protected interest for unfair, improper or otherwise wrongful reasons. Rather, the focus is on the adequacy of the state's procedures in place for the protection of such interests." *Vukelic v. Bartz*, 245 F. Supp. 2d 1068, 1083 (D.N.D. 2003) (citing *Strassburger v. Bd. of Educ.*, 143 F.3d 351, 358 (7th Cir. 1998)).

On pages 10 and 11 of the Order, the district court cited *Wild v. Dozier*, 672 So.2d 16, 17-18 (Fla. 1996), as authority for identifying the Florida Supreme Court as the source of Judge Spechler's remedy. *Wild* does not discuss any available administrative procedures that are

in place by which a judge can grieve a retaliatory banishment by a chief judge. *Wild* is inapplicable because it (1) does not concern the rights of a judge, (2) is not a 1983 action, and (3) is not an employment case. *Wild* has nothing to do with a judge's administrative remedies, but rather concerns a criminal defendant's right to challenge a judge's jurisdiction over a felony case as a result of a reassignment from a county court. That opinion stands for the narrow proposition that a Florida litigant who believes the trial judge is without jurisdiction to hear the case can only address that issue in the Florida Supreme Court.

Citing *Wild* in this fashion is erroneous as there is no administrative procedure in Florida by which Judge Spechler could challenge the retaliatory administrative action. The Florida Rules of Judicial Administration provide no remedy. In addition, the exhaustion of administrative remedies is not a prerequisite to a 1983 action. *Tookes v. City of Riviera Beach*, 633 So.2d 566, 567 (Fla. 4th DCA 1994). The district court recognized this law but chose to ignore it. [DE-30, p.11].

In *Avellino*, the court considered the chief judge as the agent of the state's supreme court. *Avellino*, 991 F. Supp. at 722. Therefore the Florida Supreme Court could not rightfully adjudge the legality of its own agent. *Id.* at 727-728.

As this Court held in *Hudson v. Palmer*, 468 U.S. 517 (1984):

> When due process claims are based upon random, unauthorized acts by state employees

> rather than established state procedures, the Due Process Clause is not violated 'so long as the State provides a meaningful post-deprivation remedy.

Id. at 531. Judge Spechler has pled that he had no effective post retaliatory remedy.

The district court regarded Judge Spechler's resignation as the linchpin of its adjudication. However, because there was no post-deprivation procedure in place for the protection of Judge Spechler's interests, Judge Spechler's resignation is not deemed voluntary. The district court placed great weight on the fact that Judge Spechler did not seek to reconcile the matter with Judge Tobin. [DE-__: para. 10].[3] However, the denial of Judge Spechler's constitutional rights, whether temporary or subject to reconciliation, did not deprive him of his right to due process with respect to the banishment. *Goss v. Lopez*, 419 U.S. 565, 575 (1975); *see also Crawford v. Carroll*, 529 F.3d 961, 972 (11th Cir. 2008) (reinstatement or reconciliation does not alter the initial deprivation of constitutional rights).

In addition, while Judge Spechler generally pled a post-retaliation procedural due process claim, he also sought leave of court to amend and plead the procedural due process claim in more detail. In a timely filed Supplement to Motion for Reconsideration/Rehearing and for Leave to File a Second Amended Complaint [DE-32], Judge Spechler detailed these additional

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3. Judge Spechler did try to reconcile matters with Judge Tobin. [DE-18, para. 22, 31].

allegations and claims. Judge Spechler also sought to bring declaratory claims concerning the confidentiality of the JQC proceeding and more fully allege that Judge Tobin had falsely and maliciously complained to the JQC concerning Judge Spechler. This complaint with the JQC was pending at the time Judge Tobin had the Letter delivered to Judge Spechler's chambers. Judge Spechler had just received and was in possession of the Notice of Investigation in all of its details from the JQC at the time he received the Letter. [DE-32]. At the time Judge Tobin delivered the Letter, he knew that Judge Spechler had been prohibited, by the JQC, from discussing, in any manner, the contents of the complaint, until such time as the Complaint ceased being confidential. *See* JQC Rule 23.

Additionally, Judge Tobin violated the above cited confidentiality provisions when he leaked the existence of the JQC complaint against Judge Spechler. [DE-18; para. 20]. Judge Spechler seeks to specifically allege that he was questioned by the media regarding the details of the confidential proceeding, and learned from the media that these matters had been leaked. [DE-34; para. 7].

Judge Spechler will also allege that, upon receipt of the Letter, he was fully apprised of the nature of Judge Tobin's false complaint as detailed in the Notice of Investigation, and recognized that the Letter was sent in furtherance of that complaint. Judge Spechler further believed that Judge Tobin sought to have Judge Spechler removed from the bench and would have him arrested should he return to the Central Courthouse. [DE-34].

Judge Spechler will allege that through counsel he specifically requested permission to reveal the contents of the JQC proceeding and his version of the facts but was advised that he was, at that time, still precluded from doing so. [DE-34; para. 4]. When Judge Spechler filed his Amended Complaint, he thereafter only made limited reference to the JQC proceeding.

The Order stated,

> "There are also vague assertions that Defendant spoke ill of Plaintiff to the Judicial Qualifications Committee. There is, however, no allegation that shows those comments led to a 'concrete and particularized' injury since the Judicial Qualifications Committee has no jurisdiction over non-judges."

[DE-30; p.15-16]. Florida Constitution Art. V, § 12(a)(1) provides that the JQC continues to have jurisdiction over a judge for one year after his resignation. Therefore, Judge Spechler was prevented from making detailed and specific allegations. Judge Spechler now seeks to plead the "concrete and particularized injury." Judge Spechler also stated as grounds for leave to amend that on August 22, 2008, the JQC conducted an extensive probable cause hearing concerning complaints against Judge Spechler. [DE-34; para.14]. Judge Spechler will allege that on October 14, 2008, after the filing of the Amended Complaint, the JQC notified Judge Spechler that the investigative panel determined to take no further action at that time. The JQC, however, stated "as required by the Constitution and the Commission Rules, this matter remains confidential in all aspects,

including the identity of the person or persons that may have caused the Commission to institute its investigation."

Judge Spechler maintains that a strict enforcement of the JQC's rules on confidentiality will impair his procedural due process and First Amendment rights. In fact, the Supreme Court of Illinois in *People ex rel. the Ill. Judicial Inquiry Bd. v. Hartel*, 380 N.E. 2d 801, 806 (1978) stated that the confidentiality provision as to judicial inquiries could be overridden if federal due process requirements compelled certain disclosures. While that opinion concerned the need for confidential information in order to defend a criminal complaint, the case *sub judice* affects the career of a judge who has been denied due process. Judge Spechler would simply ask the trial court to request and then inspect *in camera* the JQC complaint against Judge Spechler to verify that Judge Tobin was a complainant and that the contents of the complaint directly related to the Letter. The significance of the disclosure of the complaint is to demonstrate that, in effect, Judge Tobin was, by using his powers as Chief Judge, maliciously prosecuting his own JQC complaint. This disclosure will not violate the public policy of confidentiality in order to protect the accused and the complainant. The disclosure will simply corroborate Judge Spechler's claim that the disclosure of Judge Tobin's identity as a complainant will demonstrate malice.

III. The District Court and the Court of Appeals Both Failed to View the Pled Facts In A Light Most Favorable To Petitioner Upon Dismissal of the Amended Complaint With Prejudice

While the district court correctly recited its duty to view the alleged facts in a light most favorable to Judge Spechler, the court failed to do so. Instead, the court misconstrued or ignored alleged facts and adopted facts stated in Judge Tobin's Motion to Dismiss. For example, after the hearing on the Motion to Dismiss the initial complaint, Judge Spechler filed the Amended Complaint and attached Exhibit 1, Judge Tobin's e-mail to judges; Exhibit 2, the Letter; Exhibit 3, the e-mail giving Judge Spechler permission to enter the Central Courthouse; and Exhibit 4, Judge Spechler's letter of resignation. [DE-18]. Judge Spechler then proceeded to plead specific facts that demonstrated that Judge Tobin had a malicious motive to retaliate against Judge Spechler. [DE-18, p.24-31, 75-77, 87]. The district court was required to read the Letter consistent with Judge Spechler's allegations and in a light most favorable to Judge Spechler. Yet the district court found that Judge Tobin was only banning Judge Spechler from his chambers and staff. In effect, the district court rejected and ignored the facts as alleged and relied on an administrative order which only indicates the pending locations of satellite courthouses. [DE-30; p.7-8,12; Exh. C]. The point so often stressed in the Amended Complaint is that there is no docket, i.e., no established docket or contemplated docket that would be administered by Judge Spechler. The transfer relieved Judge Spechler of his duties, and was simply a pretext to justify retaliation.

The district court also assigned a limited meaning to the Letter by indicating that the Letter only referred to Judge Spechler's "judicial duties." [DE-30, p.12]. However, the jury should decide the meaning of the Letter in light of the ill will held by Judge Tobin against Judge Spechler. The gravamen of Judge Spechler's charge of malice is that Judge Tobin was acting with unbridled and vindictive emotions. An inquiry can be made into the subjective motivation of an act of retaliation when an otherwise constitutional act becomes unconstitutional, i.e., when the act is perpetrated with malice. *Mihos*, 358 F.3d at 103-104.

The district court also misconstrued Judge Spechler's reason for his resignation. The district court simply said that the fact there was no docket at the time the Letter was written was of no import. [DE-30; p.8]. However, Judge Spechler alleges that no docket was even contemplated and that fact makes the transfer "bogus". The district court simply relied on the Administrative Order. [DE-30, Exh. C]. What is particularly telling about the Administrative Order is that it indicates that the actual locations were not even in existence at the time the administrative order was entered. That order stated that each satellite courthouse would be determined by the Broward County Board of Commissioners. [DE-30, Exh. C].

The district court also reasoned that Judge Spechler "put up no fight" and therefore waived any right to complain, i.e., he had no standing. [DE-30; p.10, 14]. However, when Judge Spechler alleged, *inter alia*, that he was denied his constitutional right of access to the Central Courthouse to pursue personal litigation and

to attend sheriff sales, that act of banishment immediately ripened into a violation of Judge Spechler's substantive constitutional rights, thereby obviating any requirement to petition for redress. *McKinney v. Pate*, 20 F.3d 1550, 1557 (11th Cir. 1994) (violation of a substantive due process right is complete when it occurs). There was no need to "put up a fight". Administrative remedies need not be exhausted when they do not exist. [DE-30, p. 11].[4]

Rather than viewing the allegations of the Amended Complaint with respect to the motive of Judge Tobin from an objective standpoint, the district court was required to permit discovery in order to examine what was going on in the mind of Judge Tobin. A subjective test is applied when the issue of motive is involved. The objective test is only applied as to whether Judge Tobin knew his actions violated settled law. *See Mihos*, 358 F.3d at 103-04. At this stage of the litigation, the district court was required to accept as true that Judge Tobin's acts were malicious, retaliatory, and in bad faith.

At page 2 of the Order, the district court stated, "Plaintiff's claim is that he was forced to resign when Chief Judge Tobin 'banished' him to a satellite court office and to a nonexistent court docket." [DE-30, p.2]. This statement is an oversimplification of Judge Spechler's claim and understates the allegations in the

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4. In light of *McKinney* the issue as to whether Judge Spechler must exhaust administrative remedies is rendered moot as to the 1983 action because no such requirement exists with respect to the filing of a 1983 action. *See also*, *Tookes*, 633 So. 2d at 566.

Amended Complaint as to the reasons Judge Spechler was forced to resign. The district court on page 2, and on page 8, again refers to an "office." In fact, the allegations in the Amended Complaint set forth that Judge Spechler was assigned to a fictitious position in an unidentified satellite courthouse. Judge Spechler was simply sent home. Judge Spechler has alleged that the assignment was "bogus" and therefore a pretext to disguise a suspension or reprimand and a constructive discharge. [DE-18, para. 50, 55, 73, 95, 117, 121].

If permitted, Judge Spechler can allege that Judge Tobin never entered a written instruction to either establish a docket or provide Judge Spechler with chambers, a judicial assistant, or other necessary facilities. In addition, Judge Spechler can allege that Judge Tobin fired Judge Spechler's judicial assistant who had been with the district court in excess of fifteen years. [DE-32].

At page 3 of the Order, the district court states,

> Plaintiff alleges that his new assignment in the satellite courthouses was bogus and Judge Sharon Zeller's lack of response to Plaintiff's inquiry about the docket is proof of the docket's nonexistence. Appellant claims that he separately confirmed with the Clerk's staff that no dockets existed in the satellite courthouse on March 28, 2008. Defendant has provided the Court with an Administrative Order of the Courts of Broward County which

> establishes the dockets of the satellite courthouses. See Exhibit C (Administrative Order VI-07-A-1A)."

[DE-30].

Judge Spechler has never disputed the fact that there are satellite courthouses where traffic hearing officers and, upon request, county court judges, hear moving traffic violations. What Judge Spechler alleged as "bogus" was that Judge Tobin never assigned him to any specific courthouse, nor provided him with chambers, judicial assistant, docket, etc., when he removed him from the Central Courthouse with no prior notice. When Judge Spechler calls the alleged assignment "bogus," he means that it was "pretextual," as that term is used when applying the law that pertains to retaliatory acts.

Additionally at page 3 of the Order, the district court states,

> As a result of receiving this letter, Plaintiff claims that he had no choice but to postpone two personal foreclosure proceedings that had been previously been set for early April 2008. He ultimately obtained favorable judgments in both foreclosure actions but claims the "notice of banishment" precluded him from personally attending the sheriff sales once he obtained those judgments.

[DE-30].

The district court again misconstrued the allegations of the Amended Complaint and omits Judge Spechler's allegation that he was compelled to resign his position in order to extricate himself from Judge Tobin's illegal directive in order to pursue his ongoing civil litigation described above. [DE-18, para. 80-81]. Judge Spechler pled that he resigned because, *inter alia*, he believed that he would be in contempt of court and arrested if he set foot in the Central Courthouse in violation of the directive.

By his Memorandum of Law in Opposition to Motion to Dismiss, Judge Spechler alerted the district court that Judge Tobin's Motion to Dismiss had not adopted Judge Spechler's allegations as true but rather justified his conduct in light of a different set of facts. Judge Spechler also provided a lengthy explanation why he could not preside over litigants after having been banished from the courthouse. [DE-26]. Judge Tobin's Motion to Dismiss simply argued with the allegations of fact and alleged new facts. [DE-21]. By adopting Judge Tobin's rebuttal to the alleged facts, the district court ignored *Glover v. Ligett Group, Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006). [DE- 30, p.4]. A loss of prestige, either within the organization or with regard to the general public is an objective factor that the court should consider as part of the reasonable person test when adjudging the voluntariness of a resignation. *Doe v. DeKalb County Sch. Dist.*, 145 F.3d 1441, 1442 (11th Cir. 1998). After reading Judge Spechler's rationale for his resignation, the Court should conclude that the loss of prestige as a judge was a substantial factor causing him to resign.

IV. Any Insufficiencies Can Be Remedied By Amendment, or in the Alternative, the Pled Facts Established State Court Causes of Action Which Should Be Remanded

With regard to the intentional infliction of emotional distress claim, Judge Spechler was required to mitigate damages by resigning his position. In light of Judge Tobin's history of accusations and his unconstitutional conduct providing a basis for this action, Judge Spechler suffered emotional distress which justified his act of extricating himself from what was in essence an untenable work environment. The district court should have recognized that the resignation was not a factor to be considered when adjudging the viability of this particular common law tort claim. In fact, even where a 1983 claim has been dismissed against a judge, a companion claim of intentional infliction of emotional distress can go to trial. *Cameron*, 38 F.3d at 276.

The district court further reasoned that, "[t]he claim of intentional infliction of emotional distress fails as Chief Judge Tobin's statements to the press did not rise to the level required to state a cause of action." The district court cited *Gallogly v. Rodriguez*, 970 So.2d 470, 471 (Fla. 2d DCA 2007). [DE-30, p. 17]. This finding wholly misses the mark. Judge Spechler submits that the malicious, unconstitutional and retaliatory conduct, which preceded the statements to the press, also inflicted severe emotional distress on Judge Spechler.

At the time Judge Spechler resigned, there was nothing Judge Spechler could have done to undo the damages suffered by the widespread publicity of his

banishment. Judge Spechler had the right to sue for the stated causes of action because they had fully accrued. By 5:00 p.m., on the Monday after receiving the Letter, Judge Spechler had already been damaged. Any later actual reassignment would accomplish nothing to remove the stigma.

At page 17 of the Order, the district court addresses the count for constructive discharge. The district court correctly points out that, ". . . like federal law, Florida law requires the Plaintiff to show, under an objective standard, that the employer made working conditions so difficult that a reasonable person would feel compelled to resign." [DE-30, p. 17]. Based on the facts pled, any reasonable judge would feel compelled to resign. Again, the Court is directed to Judge Spechler's memorandum of law that explains why he was compelled to resign. [DE-26, p.10-11]. Judge Spechler also pled that he had a well founded fear that he would be arrested and adjudicated in contempt of court or otherwise be charged with neglect of duty pursuant to Fla. R. Jud. Adm. 2.215(h).

Yet the district court suggests that in each instance when Judge Spechler needed to enter the Central Courthouse he merely needed to ask permission. [DE-30; p.7]. Judge Spechler posits that he would become the only judge in the State of Florida who would be required to ask for permission to enter the Central Courthouse. In effect, the district court ignored the fact that Judge Spechler would be required to expose himself to even more emotional distress by having to beg to enter the public courthouse. Judge Tobin's malicious actions created an intolerable and hostile working condition.

The district court also found absolute immunity for statements to the press regarding the Letter. [DE-30; p. 17-18]. For absolute privilege to apply, the statement must be within the scope of the public officer's duties. The acts complained of by Judge Spechler were not, as a matter of law, within the scope of Judge Tobin's duties. Malicious, retaliatory conduct, if proven, is not protected by qualified immunity, sovereign immunity and absolute privilege. *Fernander v. Bonis*, 947 So.2d 584, 589 (Fla 4th DCA 2007).

Judge Spechler has sought leave of the district court to replead the state court claims, including defamation and defamation by implication pursuant to the Florida Supreme Court opinion, *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008), which was issued after the filing of the Amended Complaint. Leave should have been freely granted pursuant to *Cameron* and *Poe*.

Finally, the district court adopted all other arguments advanced by Judge Tobin, including that Judge Spechler had no standing. This finding needs no further refutation in light of the cases cited in support of Count I. Judge Spechler was the victim of retaliation for exercising his First Amendment rights. Judge Spechler was also stifled and subject to contempt for even discussing the frivolous complaint. With respect to standing as it relates to Judge Spechler, he has been relegated to the standing of a second class citizen.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED JUNE 25, 2009

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 09-10246
Non-Argument Calendar.

D.C. Docket No. 08-61130-CV-FAM

JAY S. SPECHLER,

Plaintiff-Appellant,

v.

VICTOR TOBIN,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(June 25, 2009)

Before WILSON, PRYOR and HILL, Circuit Judges.

PER CURIAM:

Jay S. Spechler appeals the dismissal of his five-count civil rights damages complaint, filed under 42 U.S.C. § 1983, against Chief Judge Victor Tobin of

Broward County alleging violations of various liberty and property interests without due process of law, as well as other state law claims. These claims arose out of former county judge Spechler's reassignment by the Chief Judge to a different judicial post, and Spechler's resignation one day later, alleging that he had been "banished" to a satellite court office with a nonexistent docket.

The district court reviewed Spechler's claims and determined that defendant is protected by qualified immunity because no violation of a clearly established constitutional right occurred, plaintiff does not have standing to pursue his claims, sovereign immunity protects defendant from the state law claims, and, in any event, they have no merit.

We have reviewed the pleadings, the record, and the district court's order dismissing this case. Finding no error, we shall

AFFIRM.

APPENDIX B — ORDER GRANTING MOTION TO DISMISS IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION ENTERED DECEMBER 10, 2008

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

Case Number: 08-61130-CIV-MORENO

JAY S. SPECHLER,

Plaintiff,

vs.

VICTOR TOBIN,

Defendant.

ORDER GRANTING MOTION TO DISMISS

"For after all, the best thing one can do when it is raining is to let it rain." Rather than heed Henry Wadsworth Longfellow's famous words, Plaintiff, former Broward County Judge Jay Spechler resigned his judgeship one business day after receiving a letter from Chief Judge Victor Tobin. The letter, which forms the crux of Plaintiff's complaint under 42 U.S.C. § 1983, reassigned Plaintiff to work on a civil traffic docket and indicates that Plaintiff should not return to the central

courthouse without permission. *See* Exh. A (the reassignment letter). The alleged reason for Plaintiff's resignation-the docket to which he was assigned did not exist on the day he received the reassignment letter. *See* Exh. B (the resignation letter).

Chief Judge Tobin has moved to dismiss this suit asserting qualified immunity. Because the Court agrees that Chief Judge Tobin was acting within his discretion as the Chief Judge in reassigning former Judge Spechler to a separate division, the Court grants him qualified immunity. Moreover, the Court also finds that Plaintiff lacks standing. By resigning and failing to pursue a remedy in the Florida courts to redress his reassignment, Plaintiff cannot establish that Defendant's actions are "causally connected" to the injuries claimed. Having found Chief Judge Tobin acted within his discretion, the Court also finds sovereign immunity bars the Plaintiff's state law claims.

I. Background

Plaintiff, Jay S. Spechler, is a former County Court Judge in Broward County who is suing Chief Judge Victor Tobin in his individual capacity under 42 U.S.C. § 1983. Chief Judge Tobin has moved to dismiss claiming he has qualified immunity from the federal claims and sovereign immunity on the state law claims.

On March 31, 2008, Plaintiff resigned his judgeship, which he had held since he was elected in 1988. Plaintiff had approximately five years left in his fifth term in office

when he resigned. Plaintiff's claim is that he was forced to resign when Chief Judge Tobin "banished" him to a satellite court office and to a nonexistent court docket.

Plaintiff alleges that he received a confidential letter from Chief Judge Tobin on March 28, 2008. The letter[1] dated March 27, 2008 and delivered by hand reads as follows:

> Dear Judge Spechler:
>
> This will serve as notice of your reassignment to civil traffic and parking ticket cases at the satellite courthouses for Broward County, Florida effective March 28, 2008. You are not to return to the Central Courthouse except at my direction. I am also requesting you provide me with a telephone number where you may [be] reached with regard to your judicial duties. Your judicial assistant, Lori Brave, shall continue support for County Civil Division 52.
>
> While you are assigned to civil traffic and parking ticket dockets at the satellite

1. After oral argument on the motion to dismiss, the Court ordered Plaintiff to provide a copy of the resignation letter and the reassignment letter. *Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir.2002) (stating a document can be considered by a court on a motion to dismiss when the document is central to plaintiff's claim and is undisputed (i.e. authenticity not challenged)).

> courthouses, the Clerk of Court will provide you with the dockets. You will communicate with the staff for the Clerk of Court and Judge Zeller to determine dates and times for dockets.
>
> Sincerely,
> Victor Tobin
> Chief Judge

Plaintiff alleges that his new assignment in the satellite courthouses was bogus and Judge Sharon Zeller's lack of response to Plaintiff's inquiry about the docket is proof of the docket's nonexistence. Plaintiff claims that he separately confirmed with the Clerk's staff that no dockets existed in the satellite courthouse on March 28, 2008. Defendant has provided the Court with an Administrative Order of the Courts of Broward County, which establishes the dockets of the satellite courthouses. *See* Exh. C (Administrative Order VI-07-A-1A).

As a result of receiving this letter, Plaintiff claims he had no choice but to postpone two personal foreclosure proceedings that had been previously set for early April 2008. He ultimately obtained favorable judgments in both foreclosure actions but claims the "notice of banishment" precluded him from personally attending the sheriff sales once he obtained those judgments.

Appendix B

When confronted with questions about the "notice of banishment," Chief Judge Tobin provided no comment to the press, which Plaintiff claims was a calculated response to cast a shadow over Plaintiff's reputation as a County Judge. Plaintiff resigned his post as a County Court Judge by letter dated Monday March 31, 2008 after receiving Chief Judge Tobin's reassignment letter on Friday March 28, 2008. The resignation letter to Governor Charlie Crist reads as follows:

> Dear Governor Crist,
>
> Please allow this to serve as notice of my resignation as Broward County Judge effective Monday March 31, 2008 at 5 P.M. It has been an honor and privilege to have served the people of Broward County and the State of Florida during the past 20 years. I look forward to continue working in the legal system in the future.
>
> Cordially,
> Jay Spechler
> Broward County Judge

The harm that Plaintiff claims he suffered due to the "notice of banishment" is best quoted from the amended complaint:

> Defendant deprived the Plaintiff of 1) his constitutional guarantee of liberty to enter

> public places, such as the courthouse, without interference, to (a) conduct personal business, (b) avail himself of the courthouse library, and (c) assemble or meet with his fellow judges; and (2) his constitutional right of access to the courthouse to pursue personal litigation.

Plaintiff's five-count amended complaint alleges the following causes of action: 1) a violation of 42 U.S.C. § 1983 by Defendant for depriving Plaintiff of a his access to a public place and the courts, his property interest (i.e. his job) without due process, and his liberty interest (i.e. stigma to his reputation) without due process of law; 2) a violation of the Florida Constitution for not allowing the Judicial Qualifications Commission and the Supreme Court to conduct their investigative and disciplinary functions; 3) constructive discharge; 4) intentional infliction of emotional distress; and 5) false light invasion of privacy.

II. Legal Standard

On a motion to dismiss, the Court must view the complaint in the light most favorable to the plaintiff. *Glover v. Liggett Group, Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct.

1955, 1964-65 (2007) (citations omitted). A complaint must have "enough facts to state a claim to relief that is plausible on its face"; if it does not "nudge[ ] the[ ] claims across the line from conceivable to plausible, [it] must be dismissed." *Id.* at 1974.

Generally, "the Court is constrained to review the allegations as contained within the four corners of the complaint and may not consider matters outside the pleading without converting the defendant's motion into one for summary judgment." *Makro Capital of Am., Inc. v. UBS AG*, 372 F. Supp. 2d 623, 627 (S.D. Fla. 2005) (quoting *Crowell v. Morgan Stanley Dean Witter Servs. Co.*, 87 F. Supp. 2d 1287, 1290 (S.D. Fla. 2000)). However, "[t]he Eleventh Circuit has held that, when considering a 12(b)(6) motion to dismiss, a court may take judicial notice of the public record, without converting the motion to one for summary judgment, because such documents are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Id.* (quoting *Davis v. Williams Comms., Inc.*, 258 F. Supp. 2d 1348, 1352 (N.D. Ga. 2003)).

III. Legal Analysis

A. *Qualified Immunity*

The qualified immunity defense may be raised and addressed on a motion to dismiss, and will be granted if the complaint "fails to allege the violation of a clearly established constitutional right." *Smith v. Siegelman*,

322 F.3d 1290, 1294 (11th Cir. 2003) (quoting *Williams v. Ala. State Univ.*, 102 F.3d 1179, 1182 (11th Cir. 1997)). The doctrine protects government officials sued in their individual capacities as long as their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "The purpose of this immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation." *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002) (quoting *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002)). Only "the plainly incompetent or those who knowingly violate the law" are subjected to liability. *Chesser v. Sparks*, 248 F.3d 1117, 1122 (11th Cir. 2001).

1. Was Chief Judge Tobin Acting Within Scope of Discretionary Authority in Reassigning County Judge Spechler?

To establish a qualified immunity defense, "the public official must first prove that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred." *Vinyard*, 311 F.3d at 1346 (quoting *Lee*, 284 F.3d at 1194). To act within the scope of discretionary authority means that "the actions were (1) undertaken pursuant to the performance of [the official's] duties and (2) within the scope of [his] authority." *Collier v. Dickinson*, 477 F.3d 1306, 1308 FN. 1 (11th Cir. 2007) (quoting *Lenz v. Winburn*, 51 F.3d 1540, 1545 (11th Cir. 1995)).

Appendix B

There is no question that Chief Judge Tobin was acting within his discretionary authority. The Florida Rules of Judicial Administration grant a Chief Judge the plenary authority to exercise administrative supervision over judges in the circuit. Relocating Plaintiff to a satellite courthouse and changing his case assignment is within that authority. Fla. R. Jud. Adm. 2.215 ("The Chief Judge . . . shall develop an administrative plan for the efficient and proper administration of all courts within that circuit. The plan shall include an administrative organization capable of effecting the prompt disposition of cases; assignment of judges . . . ; control of dockets; regulation and use of courtrooms. . . ."). Defendant also had Florida constitutional and statutory authority to reassign Plaintiff. *See* Fla. Const. Art. V, § 2(d) ("The chief judge shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit."); § 43.26(2)(a), Fla. Stat. (2007) ("The chief judge of the circuit shall have the power: (a) To assign judges to any division of the court and to determine the length of the assignment.").

Plaintiff's allegations that Defendant acted outside his discretionary authority and usurped the Judicial Qualifications Committee and Florida Supreme Court's functions are without merit as Defendant *1357 did not discipline Plaintiff in the legal sense. The Florida Constitution states:

Appendix B

Discipline; removal and retirement.—

(a) JUDICIAL QUALIFICATIONS COMMISSION. — . . .

(1) There shall be a judicial qualifications commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct . . . demonstrates a present unfitness to hold office, and to investigate and recommend the discipline of a justice or judge . . . whose conduct warrants such discipline. For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension, with or without pay, or lawyer discipline.

Fla. Const. Art. V § 12(a)(1). The allegations in the complaint do not establish that Plaintiff was reprimanded, fined or suspended. It merely required Plaintiff to obtain permission, which he sought and obtained to enter the central courthouse, since he was being relocated to a satellite courthouse-something which is clearly within the Chief Judge's authority to do under the Florida Rules of Judicial Administration and the Florida Constitution.

Plaintiff urges the Court that there is an issue of fact for a jury as to Chief Judge Tobin's motive in reassigning him to another docket, which had not been

clearly established on the date of the reassignment. Just as the Court accepts as true Plaintiff's allegation that the docket was nonexistent on the day he received the letter from Chief Judge Tobin, the Court may also take judicial notice of the Administrative Order setting forth the work to be conducted at the satellite courthouses. It is well-settled that the Court may take judicial notice of the public record, without converting the motion to dismiss to a motion for summary judgment. *Makro Capital of Am., Inc.*, 372 F. Supp. 2d at 627 (citing *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271 1279-1280 (11th Cir. 1999)). The Administrative Order establishing the dockets at the satellite courthouses is one such document, "whose accuracy cannot reasonably be questioned." *Id.* In light of this Administrative Order, the Court cannot find that Chief Judge Tobin exceeded his authority by reassigning him to a satellite office, even though no precise docket of cases was available to Plaintiff on the specific date of reassignment. Such reassignment cannot be viewed as a "reprimand" or "discipline." To rule otherwise would subject all of Florida's Chief Judges to lawsuits claiming improper motivation in reassigning judges to divisions that are not a particular judge's first choice. When a judge is appointed or elected in Florida, he is a constitutional officer for either County or Circuit Court and not for a particular division (e.g. family, juvenile, dependency, traffic, etc.).

2. Do the allegations establish any constitutional violations?

Once the public official establishes that he was acting within his discretionary authority, the burden shifts to the plaintiff to demonstrate that qualified immunity is not appropriate. First, the Court must determine whether the allegations, if true, establish a constitutional violation. *Danley v. Allen*, 540 F.3d 1298, 1306 (11th Cir. 2008); *Siegelman*, 322 F.3d at 1295. If there is a violation of a constitutional right under the plaintiff's version of the facts, "the next sequential step is to ask whether the right was clearly established." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). In this case, Plaintiff claims he was deprived of: (1) a property interest in his judgeship; (2) a liberty interest in accessing the courts; and (3) a liberty interest in preserving his reputation, without due process of law.

a. Property Interest

To assert entitlement to a due process claim based upon a property interest in employment, a plaintiff must establish a "legitimate claim of entitlement" to continued state employment. *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 756 (2005) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)). A court must look to state law to determine whether the terms and conditions of a plaintiff's employment create a property interest in continued employment. *Id.* In Florida, judges are not employees of their chief judges. They are constitutional officers who attain and retain office

through election or appointment by the Governor. *See* Fla. Const. Art. V, § 10; Fla. Const. Art. V, § 11. The complaint establishes that Plaintiff had a legitimate claim of entitlement in his position as a County Judge. However, he is not entitled to a particular division. Nor is he constitutionally entitled to avoid certain divisions, such as hearing traffic cases in a satellite courthouse. The question, then, is whether Defendant deprived Plaintiff of that right-to be County Judge-without due process of law.

Plaintiff claims that Defendant put him in such "a pickle"—to use the phrase coined by Shakespeare-that he was forced to resign. The law generally presumes that a resignation is voluntary. *Hargray v. City of Hallandale*, 57 F.3d 1560, 1568 (11th Cir. 1995). To determine whether a resignation is voluntary, courts must examine the surrounding circumstances to test the ability of the employee to exercise free choice. *Id.* There are two situations where an employee's resignation will be deemed involuntary, and thus a deprivation of due process: (1) where the employer forces the resignation by coercion or duress, or (2) where the employer obtains the resignation by deceiving or misrepresenting a material fact to the employee. *Id.* Plaintiff alleges he was coerced by the alleged "notice of banishment" to resign. He claims that because his image was tarnished by the "notice of banishment," it would be unethical to force litigants to appear before him. This argument, however, contradicts his allegation that the docket was "nonexistent" as of the date of his resignation, one business day after he received the reassignment. He

also claims it would be unethical for him to stay home and collect a check when he was stripped of all his work.

Under the coercion or duress theory, the Court must consider whether under the totality of the circumstances, the employer's conduct deprived the employee of free will in choosing to resign. The Eleventh Circuit has stated that resignations can be voluntary even where the employee is facing termination for cause. "Resignations obtained in cases where an employee is faced with . . . unpleasant alternatives are nevertheless voluntary because 'the fact remains that plaintiff *had a choice.* [Plaintiff] could stand pat and fight.' " *Id.* This particular Plaintiff *put up no fight at all.* Within one business day of receiving the letter reassigning him to a satellite office, he resigned without notice to Chief Judge Tobin. *See Slattery v. Neumann,* 200 F. Supp. 2d 1367, 1371 (S.D. Fla. 2002) (stating employee must "act reasonably before choosing to resign," and such "[r]easonable conduct involves notifying the employer of improper behavior, and affording the employer an opportunity to correct the situation."). The letter indicated to Plaintiff that he should discuss his new docket assignment with Judge Zeller and the Clerk of Court. Plaintiff claims the Clerk of Court confirmed there was no docket, but Plaintiff did not even wait a full day to allow the Clerk to establish a docket. To say Chief Judge Tobin forced *1359 Plaintiff to resign is contrary to *Hargray.* Certainly, Plaintiff failed to "act reasonably" by choosing to resign within one business day.

Moreover, the law provides Plaintiff with a remedy short of resignation. If Plaintiff felt that Chief Judge Tobin overstepped his authority, Plaintiff could seek Florida Supreme Court review of Chief Judge Tobin's directive. Not only does the Florida Supreme Court have jurisdiction to review judicial assignments and other administrative decisions by a Chief Judge, its jurisdiction to do so is exclusive:

> . . . we conclude that this Court has exclusive jurisdiction to review judicial assignments . . . [A] litigant who is affected by a judicial assignment made by a chief judge of a judicial circuit must challenge the assignment in the trial court and then seek review in this Court by way of petition for writ of prohibition or petition for relief under the "all writs" power.

Wild v. Dozier, 672 So. 2d 16, 17-18 (Fla. 1996). Rather than resign his post immediately and without notice to the Court or the Supreme Court, Plaintiff could have pursued review of the judicial assignment. Plaintiff argues that he need not exhaust administrative remedies before filing suit under § 1983. While this is true in most cases, in this case, Plaintiff is a respected County Judge of twenty years and his complaint shows he undisputedly resigned one business day after receiving the reassignment letter. The facts as alleged do not show a constructive discharge depriving Plaintiff of his job without due process.

Appendix B

b. Deprivation of Liberty Interest: Access to Courts

Without question, the allegations in the complaint do not establish that Defendant constitutionally deprived Plaintiff of his access to courts. "Whether an access claim turns on a litigating opportunity yet to be gained or an opportunity already lost, the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong." *Christopher v. Harbury*, 536 U.S. 403, 414-15 (2002). For example, a prisoner bringing an access to courts claim is also typically challenging his conviction, the underlying claim. *See e.g.*, *Bounds v. Smith*, 430 U.S. 817, 828 (1977). It follows, then, that the "underlying cause of action, whether anticipated or lost, is an element that must be described in the complaint. . . ." *Christopher*, 536 U.S. at 414, 416 ("Like any other element of an access claim, the underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a defendant.").

Plaintiff complains that the reassignment letter, which he terms the "notice of banishment," constitutionally violated his personal access to the courts. The amended complaint says that Plaintiff could not access the library in the courthouse for research purposes and could not engage in litigation regarding personal matters. Absent from the amended complaint is the lost "litigating opportunity." In fact, Plaintiff states in the amended complaint that he obtained

personal favorable judgments in two foreclosure actions. Under *Christopher*, then, there can be no cause of action for a denial of access to the courthouse.

In any event, it is quite clear Chief Judge Tobin's letter is addressed to Plaintiff in his capacity as a judge and refers to his "judicial duties." The letter is not addressed to Plaintiff in his individual capacity as a litigant. To read the letter to preclude Plaintiff from pursuing personal litigation is not only absurd, but inconsistent with the facts alleged in the complaint. It is clear that the Chief Judge's letter of reassignment to a satellite courthouse precluded Plaintiff from entering his old chambers in the central courthouse and use of the staff assigned to that location. Moreover, there is no allegation that Plaintiff was ever actually denied permission to file a lawsuit or even enter the central courthouse. Indeed, Plaintiff entered the central courthouse with permission the weekend after receiving Chief Judge Tobin's letter to obtain personal items from chambers. Accordingly, the allegations in the complaint do not establish an access to courts claim and the Chief Judge is entitled to qualified immunity.

c. Deprivation of Liberty Interest: Reputation

When a plaintiff sustains reputational damage in connection with a termination of employment, it may give rise to a procedural due process claim for deprivation of liberty which is actionable under section 1983. *Cotton v. Jackson*, 216 F.3d 1328, 1330 (11th Cir.

2000). Generally, however, a person's interest in reputation alone, "apart from some more tangible interests such as employment" is not a protected liberty interest under the due process clause. *Siegelman*, 322 F.3d at 1296 (citing *Paul v. Davis*, 424 U.S. 693, 701, 96 S.Ct. 1155 (1976)). "To establish a liberty interest sufficient to implicate the fourteenth amendment safeguards, the individual must be not only stigmatized but also stigmatized in connection with a denial of a right or status previously recognized under state law." *Id.* (quoting *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1302-03 (11th Cir. 2001)). Put more concretely, to recover under § 1983 for a procedural due process claim for deprivation of liberty, plaintiff must show that a (1) false statement, (2) of a stigmatizing nature, (3) attending governmental employee's discharge, (4) was made public, (5) by governmental employer, (6) without meaningful opportunity for an employee name-clearing hearing. *Cotton*, 216 F.3d at 1330; *Cypress Ins. Co. v. Clark*, 144 F.3d 1435, 1436-37 (11th Cir. 1998) ("This rule, labeled the 'stigma-plus' standard, requires a plaintiff to show that the government official's conduct deprived the plaintiff of a previously recognized property or liberty interest in addition to damaging the plaintiff's reputation.").

At issue is whether the Chief Judge's letter of reassignment or his comments or refusal to comment to the press stigmatized Plaintiff in connection with a denial of a right recognized under state law. The complaint does not establish the necessary connection.

As to the reassignment letter, there are no allegations that it contained a false statement about Judge Spechler, and further it was labeled confidential by Chief Judge Tobin. Certainly, the allegations relating to the letter do not establish that Chief Judge discharged the Plaintiff, diminished his salary, or did anything else that "would . . . qualify as 'some more tangible interest [ ].' . . ." *United States v. Sigma Int'l, Inc.*, 300 F.3d 1278, 1280 (11th Cir. 2002) (quoting *Paul*, 424 U.S. at 701). The amended complaint merely states that the Chief Judge reassigned Plaintiff to a "nonexistent" docket. The letter actually states: "While you are assigned to civil traffic and parking ticket dockets at the satellite courthouses, the Clerk of Court will provide you with the dockets." Simply put, that is not the sort of "defamation" depriving Plaintiff of a tangible interest in violation of the Fourteenth Amendment.

Plaintiff alleges that Defendant's comments to the press-more like no comment-cast a shadow over Plaintiff's esteemed reputation in violation of the Fourteenth Amendment. Plaintiff alleges that when the press inquired about the letter, Defendant indicated "it speaks for itself" and the Defendant's "terse responses were . . . calculated to cast a pall over the heretofore respected and esteemed reputation of Plaintiff." *See* Amended Complaint at ¶ 65. Needless to say, Defendant's statement to the press does not constitute the type of stigmatizing damage to Plaintiff's reputation that constitutes a Fourteenth Amendment violation.

Appendix B

The allegations in the amended complaint do not establish any constitutional violations and Defendant Chief Judge Tobin is therefore entitled to qualified immunity.

B. *Standing*

Though the Court has found Defendant Chief Judge Tobin has qualified immunity, the Plaintiff also lacks standing. To have standing in federal court, a plaintiff must meet three requirements. First, he must have suffered an injury in fact: "an invasion of a legally protected interest." *Sicar v. Chertoff*, 541 F.3d 1055, 1059 (11th Cir. 2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The injury must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id.* Second, there must be a causal connection between his injury and the conduct he challenges, i.e., his injury and the conduct he challenges, i.e., his injury must be fairly traceable to the challenged actions of the defendant. *Id.* Third, it must be likely that plaintiff's injury will be redressed by a favorable decision of the court. *Id.*

In this case, Plaintiff alleges that the "notice of banishment" and the reassignment to a "nonexistent" traffic docket is the type of injury that gives him standing to bring this case under § 1983. There is, however, no "causal connection" between Plaintiff's injury and Defendant's actions. Surely, the Court cannot find that Plaintiff's injury is "fairly traceable" to Defendant's actions. Rather, Plaintiff's own actions are

what brought him injury. Plaintiff's decision to voluntary relinquish his post within one business day of receiving Chief Judge Tobin's reassignment and not pursuing any action to review the judicial assignment in the Florida courts is what led to any injury he suffered.

Moreover, there is no "causal connection" between Defendant's actions and the alleged harm to Plaintiff's reputation. In the amended complaint, Plaintiff asserts that in connection with the "notice of banishment," Defendant told the press "it speaks for itself" and that he had "no comment." Those types of comments cannot lead to the type of "concrete and particularized" injury required for the Court to find standing under *Lujan*. There are also vague assertions that Defendant spoke ill of Plaintiff to the Judicial Qualifications Committee. There is, however, no allegation that shows those comments led to a "concrete and particularized" injury since the Judicial Qualifications Committee has no jurisdiction over non-judges.

Finally, the Court finds that Plaintiff lacks standing to bring an access to courts claim for the reasons previously stated. The Chief Judge's reassignment letter was presented to Plaintiff as a judge and not in his personal capacity as a litigant. Moreover, Plaintiff actually succeeded in obtaining judgments and therefore did not suffer any cognizable injury.

Appendix B

C. *Sovereign Immunity: Florida Claims*

Chief Judge Tobin moves to dismiss the state law claims based on sovereign immunity. The sovereign immunity statute states:

> No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith . . . . The exclusive remedy for injury or damage suffered as a result of an act, event or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee.

§ 768.28(9)(a), Fla. Stat. (2007). This waiver of sovereign immunity must be strictly construed. *Maynard v. State, Dep't. of Corrections*, 864 So. 2d 1232, 1233-34 (Fla. 1st DCA 2004). As the Court previously held, Chief Judge Tobin was acting within the scope of his authority and pursuant to the Florida Rules of Judicial Administration when he reassigned Plaintiff to a satellite courthouse.

Accordingly, this provision of sovereign immunity attaches and the state law claims must be dismissed.[2]

D. *Dismissal of State Law Claims*

Even if the sovereign immunity did not attach, the Court would dismiss the state law claims. As to the claims Plaintiff raises under the Florida Constitution, the Court does not find the provisions create a private right of action and there is no statute to this effect. *Gray v. Bryant,* 125 So. 2d 846, 851 (Fla.1960).

The state law constructive discharge claim also fails because like federal law, Florida law requires the plaintiff to show, under an objective standard that the employer made working conditions so difficult that a reasonable person would feel compelled to resign. *Webb v. Fla. Health Care Mgmt. Corp.*, 804 So.2d 422, 424 (Fla. 4th DCA 2001). Having found Plaintiff acted unreasonably by resigning within one business day, the Court finds this cause of action must be dismissed.

Likewise, the claim for intentional infliction of emotional distress fails as Chief Judge Tobin's statements to the press do not rise to the level required to state a cause of action. *Gallogly v. Rodriguez,* 970

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2. The amended complaint also fails to allege that Plaintiff provided presuit notice in compliance with Florida Statute § 768.28(6)(a), which provides that a written claim must be provided as a condition precedent to filing suit "against the state or one of its agencies or subdivisions."

So. 2d 470, 471 (Fla. 2d DCA 2007). In any event, Tobin is protected by absolute immunity for his statements to the press regarding the reassignment letter. *Cassell v. India*, 964 So. 2d 190 (Fla. 4th DCA 2007) ("An absolute privilege protects the statements of all public officials, regardless of the branch of government or the level of the official . . . The controlling factor in deciding whether the absolute privilege applies is whether the communication was within the scope of the officer's duties. The scope of an officer's duties is to be liberally construed."). The Court has already found that Chief Judge Tobin was acting within his discretion, and accordingly, dismisses this count of the amended complaint.

Finally, the Court dismisses Plaintiff's claim for false light invasion of privacy. The Florida Supreme Court recently declined to recognize such a cause of action. *Jews for Jesus, Inc. v. Edith Rapp*, 997 So.2d 1098, 2008 WL 4659374 (S.D. Fla. Oct. 23, 2008).

s/ Federico A. Moreno
FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Appendix B

EXHIBIT A

VIA HAND DELIVERY

March 27, 2008

Honorable Jay S. Spechler
Room 425
Broward County Courthouse
201 S.E. Sixth Street
Fort Lauderdale, Florida 33301

Dear Judge Spechler:

This will serve as notice of your reassignment to civil traffic and parking ticket cases at the satellite courthouses for Broward County, Florida effective March 28, 2008. You are not to return to the Central Courthouse except at my direction. I am also requesting you provide me with a telephone number where you may reached with regard to your judicial duties. Your judicial, assistant, Lori Brave, shall continue to provide support for County Civil Division 52.

While you are assigned to civil traffic and parking ticket dockets at the satellite courthouses, the Clerk of Court will provide you with the dockets. You will communicate with the staff for the Clerk of Court and Judge Zeller to determine dates and times for dockets.

Sincerely
/s/ Victor Tobin
Victor Tobin,
Chief Judge

Appendix B

EXHIBIT B

Office of the Governor
The Capitol
400 South Monroe Street
Tallahassee, Fl. 32399

March 31, 2008

Dear Governor Crist:

Please allow this to serve as notice of my resignation as Broward County Judge effective Monday, March 31, 2008 at 5 P.M.

It has been an honor and privilege to have served the people of Broward County and the State of Florida during the past 20 years.

I look forward to continue working in the legal system in the future.

Cordially,
/s/ Jay Spechler
Jay Spechler
Broward County Judge

Appendix B

EXHIBIT C

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO.: VI-07-A-1A

IN RE:

COUNTY COURT SYSTEM BROWARD COUNTY, FLORIDA

In accordance with the authority vested in the Chief Judge by Rule 2.215 of the Florida Rules of Judicial Administration, effective April 1, 2007, it is

ORDERED that:

STRUCTURE OF COUNTY COURT SYSTEM

There are four County Court locations in Broward County including the Central Courthouse, each of the locations, exclusive of the Central Courthouse, is known as a satellite court facility and shall be designated as the South Satellite Courthouse, West Satellite Courthouse and North Satellite Courthouse. Effective immediately, all municipal ordinance violations, traffic infractions and misdemeanors, and Broward County ordinance violations shall be processed and heard in the

Appendix B

County Court locations assigned to the initiating municipality or agency, as follows:

CENTRAL COURTHOUSE

Fort Lauderdale	Florida Atlantic University Police Department

NORTH SATELLITE COURTHOUSE

Coconut Creek Police Department	Sea Ranch Lakes Police Department
Coral Springs Police Department	Lazy Lake Police Department
Hillsboro Beach Police Department	Florida Highway Patrol
Lighthouse Point Polic Police Department	BSO Fatality Cases
Wilton Manors Police Department	(offenses occurring North of Oakland Park Boulevard or— offenses occurring in the municipalities returnable to the North Satellite)
Margate Police Department	
Tri-Rail	
BSO District 10 (Deerfield Beach)	BSO District 11 (Pompano Beach)

Appendix B

BSO District 13 (Lauderdale-by-the-Sea)	BSO District 12 (Oakland Park)
BSO District 15 (North Lauderdale)	Division of Driver's License
BSO District 17 (Parkland)	(Pompano and Margate Offices)
Division of State Fire Fire Marshall Cases	"Smoking in Public Violations" (Florida Statutes, Section 386.204)

SOUTH SATELLITE COURTHOUSE

Hollywood Police Department	Hallandale Police Department
BSO District 1 (Pembroke Park/West Park)	Miramar Police Department
Pembroke Pines Police Department	BSO District 2 (Dania)
Florida Fresh Water Fish and Game Commission Miccosukee Police Department Florida Marine Patrol	BSO Fatality Cases (offenses occurring South of Oakland Park Blvd. or offenses occurring in the municipalities returnable to the South Satellite)

Appendix B

Broward County Animal Care and Regulation (appeals only)	Department of Transportation Division of Driver's License
Seaboard Coast Railroad Department of Motor Vehicles	(Hallandale, Pembroke Pines and Hollywood offices)
All other State Agencies	Division of Forestry
BSO District 3 (Airport)	BSO District 14 (Port Everglades Authority

WEST SATELLITE COURTHOUSE

BSO District 4 (Lauderdale Lakes)	Plantation Police Department
BSO District 5 (West of Ft. Lauderdale)	Sunrise Police Department
City of Lauderhill	BSO District 6 (Courthouse)
Davie Police Department	BSO District 7 (Tamarac)
BSO District 8 (Weston)	BSO District 16 (Cooper City)

Appendix B

BSO Fatality Cases
(offenses occurring
In the municipalities
returnable to the
West Satellite)

Office of Toll Operations
Seminole Indian Reservation
Florida Division of
Alcohol & Tobacco

Driver's License Bureau
(Tamarac & Lauderhill)

BSO Support Services & all
other nondistrict personnel

Broward County Animal
Care & Regulation
(adjudication of animal care
violation)

Florida Highway Patrol

BSO District 9
(South West Ranches)

The location of each Satellite Courthouse shall be determined by the Broward County Board of County Commissioners.

DONE AND ORDERED in chambers in Fort Lauderdale, Broward County, Florida this 11th day of May 2007, nunc pro tunc to April 1, 2007.

/s/ DALE ROSS
DALE ROSS, Chief Judge